

## **CHAPTER 482-A. FILL AND DREDGE IN WETLANDS**

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#### **§ 482-A:1. Finding of Public Purpose.**

It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

## **§ 482-A:2. Definitions.**

In this chapter:

- I. "Commissioner" means the commissioner of environmental services.
- I-a. "Council" means the wetlands council established in RSA 21-O:5-a.
- I-b. "Department" means the department of environmental services.
- II. "Division" means the division of water resources, department of environmental services.
- II-a. "Local governing body" means "local governing body" as defined in RSA 672:6.
- III. "Local legislative body" means "local legislative body" as defined in RSA 672:8.
- IV. "Mean high tide" shall be determined according to the published tables and standards of the United States Coast and Geodetic Survey, adjusted to the locality from such tables.
- V. "Municipality" shall include cities, towns, and village districts.
- VI. "Person" shall mean any natural person, firm, partnership, association, corporation, company, organization or legal entity of any kind including municipal corporations, governmental departments and agencies, or their subdivisions.
- VII. "Sand dune" shall mean a hill or ridge of sand piled up by the wind and commonly found on the seacoast.

## **§ 482-A:3. Excavating and Dredging Permit; Certain Exemptions.**

I. No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. The permit application together with a detailed plan and a map showing the exact location of the proposed project, along with 4 copies of the permit application, plan and map, shall be submitted to the town or city clerk, accompanied by a filing fee in the form of a check made out by the applicant to the state of New Hampshire. The permit application fee shall be \$50 for minimum impact projects. Fees for minor and major projects shall be assessed based on the area of dredge, fill, or construction proposed and the number of boat slips requested. The rates shall be \$100 per boat slip and \$0.04 per square foot for all proposed projects under this chapter. At the time the permit application is submitted to the city or town clerk, the applicant shall provide postal receipts or copies, verifying that abutters, as defined in the rules of the department, and except as further provided in said rules, have been notified by certified mail. The postal receipts or copies shall be retained by the municipality. The town or city clerk shall immediately sign the application and forward by certified mail, the application, plan, map and filing fee to the department. The town or city clerk shall then immediately send a copy of the permit application, plan and map to the local governing body, the municipal planning board, if any, and the municipal conservation commission, if any, and may require an administrative fee not to exceed \$10 plus the cost of postage by certified mail. One copy shall remain with the city or town clerk, and shall be made reasonably accessible to the public. The foregoing procedure notwithstanding, applications and fees for projects by agencies of the state may be filed directly with the department, with 4 copies of the application, plan and map filed at the same time with the town or city clerk to be distributed as set forth above.

II. (a) The department shall submit to the governor and council all requests for permits approved by the department which meet the definition of major projects located in great ponds or public-owned water bodies under the rules of the department which have been approved by the department.

(b) The governor and council shall consider the request for permit transmitted by the department. The governor and council may approve as transmitted or deny the submitted request. Following action by the governor and council the requests shall be returned to the department for permitting, if approved, or filing, if denied.

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) are appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands review fund.

IV. (a) The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp is exempt from the provisions of this chapter.

(b) Nontidal drainage ditches, culverts, catch basins, and man-made detention ponds that have been legally constructed to collect and convey storm water and spring run-off, and that have been maintained so that wetlands vegetation has not become dominant, or fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief, may be cleaned out when necessary to preserve their usefulness without a permit from the department. Such drainage facilities, fire ponds, or intake areas of any hydrants, may be cleaned out by hand or machine, provided that the facility is neither enlarged nor extended into any area of wetlands jurisdiction of the department of environmental services, dredged spoils are deposited in areas outside wetlands jurisdiction of the department of environmental services, and wetlands or surface waters outside the limits of the constructed drainage facility, fire pond, or intake area of a dry hydrant, are neither disturbed nor degraded.

V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of resources and economic development, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of property owner;
- (2) Name and address of logger or forester;
- (3) Town, tax map, number and lot number of job site; and
- (4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of resources and economic development, or their agents, to enter the property for determining compliance with this chapter.

(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.

VI. The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under this chapter for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots. The permit shall not be effective until so recorded.

VII. No person shall destroy, raze, deface, reduce, alter, build upon or remove any sand or vegetation from any sand dune in this state without a permit from the department; provided, however, that any person may remove sand which blows or drifts onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or which blows or drifts in, on, or around buildings or other structures owned by the person. Upon request of the property owner, the department shall provide a preapplication assessment of any lot of record located in sand dunes.

VIII. Except as set forth in paragraph IX, no person shall operate or ride any mechanized or off highway recreational vehicle on any sand dune in the state of New Hampshire.

IX. This section shall not apply to:

- (a) Police vehicles or fire vehicles.
- (b) Vehicles used in cases of emergency.
- (c) Authorized maintenance vehicles when performing maintenance duties.

(d) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

X. The maximum cash application fee for the New Hampshire department of transportation shall be \$10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with the New Hampshire department of transportation to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.

XI. (a) Small motor mineral dredging shall be limited to activities which are classified as minimum impact under rules adopted by the commissioner under RSA 482-A:11 and which do not exceed the following limits:

- (1) Power equipment shall be limited to 5 horsepower.
- (2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle.
- (3) Sluice and rocker boxes shall be limited to 10 square feet.

(b) Any person who wishes to engage in small motor mineral dredging shall obtain a permit from the department. A permit application shall be filed directly with the department, and the procedural requirements of RSA 482-A:3, I and RSA 482-A:11, III shall not apply. Any permit issued by the department under this paragraph shall expire at the end of the calendar year in which it is issued. Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

(c) Any person wishing to engage in mineral dredging which in any way exceeds the limits of small motor mineral dredging shall first obtain, in addition to a wetlands permit, a mining permit from the department of resources and economic development pursuant to RSA 12-E.

(d) The commissioner shall adopt rules, under RSA 541-A, relative to:

- (1) Small motor mineral dredging and panning.
- (2) The issuance of statewide small motor mineral dredging permits.
- (3) Any other matters relative to small motor mineral dredging and panning.

(e) The state shall retain the right to prohibit panning and mineral dredging activity at certain times or in certain locations when such activity would be detrimental to the public interest for reasons including, but not limited to, environmental and wildlife protection.

(f) Any person who has obtained a small motor mineral dredging permit from the department pursuant to this paragraph, or any person who intends to engage in any panning activity shall, prior to engaging in any small motor mineral dredging or panning activity, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

(g) The department may enter into a cooperative agreement with the fish and game department relative to enforcement of the provisions of this paragraph.

(h) Application fees shall be \$25 for residents of the state of New Hampshire and \$50 for out-of-state applicants. Fees shall be collected by the department and held in accordance with paragraph III.

XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of resources and economic development shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of organization constructing or maintaining the recreational trail.
- (2) Name and address of property owner.
- (3) Town, tax map number, and lot number of property.

(4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

XIII. (a) All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.

(b) Boat docking facilities may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction. However, any boat secured to such a dock shall not extend beyond the extension of the abutter's property line.

(c) Notwithstanding the provisions of subparagraph (a), boat docking facilities may be located closer than 20 feet from an abutter's property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.

(d) Abutters may apply for a common dock on or near their common property line. Any application for a common dock shall be accompanied by a notarized written agreement which shall be signed by all property owners. Such agreement shall be filed at the registry of deeds and attached to the deed of each property owner.

#### **§ 482-A:4. Definition.**

Without limiting RSA 482-A:3, the waters and adjacent areas within this state to which this chapter applies are defined as follows:

I. Wherever the tide ebbs and flows, this chapter shall apply to all lands submerged or flowed by mean high tide as locally determined, any sand dune or vegetation thereon in the state of New Hampshire, and, in addition, to those areas within 100 feet of the highest observable tide line which border on tidal waters, such as, but not limited to, banks, upland areas, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action.

II. Wherever fresh water flows or stands and in all areas above tidal waters not included in paragraph I of this section, it shall apply (in addition to great ponds or lakes of 10 acres or more in natural area as provided for in RSA 482-A:16-20 and RSA 482-A:21-25) to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 485-A:2 which contain fresh water, including the portion of any bank or shore which borders such surface waters, and to any swamp or bog subject to periodical flooding by fresh water including the surrounding shore.

#### **§ 482-A:5. Establishment of Wetlands Board.**

[Repealed 1996, 296:33, eff. Aug. 9, 1996.]

#### **§ 482-A:6. Powers of Department.**

I. The department may deny the petition or may require the installation of bulkheads, barriers, proper retention or containment structures, or both, to prevent subsequent fill runoff back into waters or other protective measures.

II. To perform its duties under this chapter, it shall be lawful for the department, its agents or employees to enter upon any lands in the state.

III. Whenever it is found that a wetlands is at immediate risk from dredging, filling, or other activity in violation of this chapter, the department may issue an emergency order in writing requiring the immediate cessation of such activity. Any person to whom such an order is directed shall comply immediately, but may request reconsideration and then appeal as provided in RSA 482-A:10.

IV. The department may issue an order to any person in violation of this chapter, a rule adopted under this chapter or any condition in a permit issued under this chapter to comply with this chapter, the rule or the permit, and require such remedial measures as may be necessary. Any person to whom such an order is directed may request reconsideration and then appeal as provided in RSA 482-A:10.

#### **§ 482-A:7. Gifts, Grants or Donations.**

The department is authorized to solicit and receive any gifts, grants or donations made for the efforts of the department under the provisions of this chapter and to disburse and administer the same through the department.

#### **§ 482-A:8. Public Comment and Hearing.**

The department shall provide a reasonable opportunity for public comment on proposals under RSA 482-A:3 and shall hold a public hearing for projects with significant impact on the resources protected by this chapter or of substantial public interest. The department shall notify by mail, the applicant and the property owner if different, the local governing body of the municipality involved, the planning board, if any, and the municipal conservation commission, if any, of the hearing. The department shall maintain a chronological file of all applications received under RSA 482-A:3, which shall be available for public review during normal business hours. The hearing requirement in this section may not apply to such minor projects and to such minor improvements of the shoreline of those waters subject to the jurisdiction of this chapter as the department may by reasonable rule provide. The hearing requirements of RSA 541-A:30 shall be satisfied by a hearing on reconsideration in accordance with RSA 482-A:10, III.

#### **§ 482-A:9. Notice to Abutters.**

Like notice shall be mailed to all known abutting landowners, supplemented by reasonable notice by newspaper publications to those unknown, as may be ordered by the department.

#### **§ 482-A:10. Appeals.**

I. Any person aggrieved by a decision made by the department under RSA 482-A:3 or subject to an order of the department under RSA 482-A:6 may apply for reconsideration by the department, and then may appeal to the wetlands council and to the superior court as provided in this section. A person aggrieved under this section shall include without limitation, the applicant and any person required to be noticed by mail in accordance with RSA 482-A:8 and RSA 482-A:9.

II. A request for reconsideration shall be filed with the department within 20 days of issuance of the department's decision or order. The request for reconsideration shall describe in detail each ground for complaint. No ground not set forth in the request for reconsideration shall be considered by the council, or by the superior court except as provided in paragraph VIII of this section.

III. On reconsideration, the department shall receive and consider any new and additional evidence presented, and shall make findings of fact and rulings of law in support of its decision after reconsideration. The department may hold a public hearing in accordance with its rules. Reconsideration hearings shall not be subject to the requirements of RSA 541-A. Reconsideration hearings shall be noticed in accordance with RSA 482-A:8 and RSA 482-A:9, and the department shall make a record of the proceedings. The department shall grant or deny the application for reconsideration within 30 days of the service of the application or explain in writing to the applicant why the application cannot be acted on and a statement of the time reasonably necessary to act on the application.

IV. An appeal from a decision of the department after reconsideration shall be filed with the wetlands council within 30 days of the department's decision. Filing of the appeal shall be made by certified mail to the chairperson of the council, with a copy sent to the department. An appeal to the council shall contain a detailed description of the land involved in the department's decision and shall set

forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable.

V. The council on appeal shall hold a non-evidentiary hearing as provided in its rules. The hearing shall be noticed in accordance with RSA 482-A:8 and RSA 482-A:9. The department shall provide the council with its record of decision upon receiving notice of the hearing. The appeal shall be determined upon the record below. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

VI. On appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record that supports its decision.

VII. Any party aggrieved by a decision of the council may apply to the council for reconsideration within 20 days of the council's order. The council shall grant or deny the application for reconsideration at its first regularly scheduled meeting after service of the application. The council may grant such application if in its opinion good reason therefor is stated.

VIII. Any person aggrieved by a decision of the council after reconsideration may appeal to the superior court for the county where the land in question is located by petition within 30 days of issuance of such decision. The petition shall set forth each ground upon which the decision is claimed to be unlawful or unreasonable, in whole or in part. No ground not set forth in the application for reconsideration shall be given any consideration by the court unless the court for good cause shown shall allow the appellant to specify additional grounds.

IX. In the case of a remand to the department by the council, the department may accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.

X. Any hearing by the superior court upon appeal under this section shall be given priority on the court calendar.

XI. On appeal to the superior court, the burden of proof shall be upon the party seeking to set aside the decision of the council to show that the decision is unlawful or unreasonable. The council's decision shall not be set aside or vacated, except for errors of law, unless the court is persuaded, by a preponderance of the evidence before it, that said decision is unjust or unreasonable.

XII. Any person whose rights may be directly affected by the outcome of the appeal may appear and become a party, or the court may order such persons to be joined as parties as justice may require.

XIII. Upon the filing of an appeal, the clerk of court shall issue an order requiring a certified copy of the record of the appeal to be filed with the court by the council. The record shall consist of the council's decision, the department's record of decision as submitted to the council and the record of the hearing before the council.

XIV. All evidence transferred by the council shall be considered by the court regardless of any technical rule which might have rendered the evidence inadmissible if originally offered in the trial of an action at law. The court may receive and consider such additional evidence as would be permissible under RSA 677:10.

XV. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the decision complained of in whole or in part, as the case may be; but, in case such decision is wholly or partly vacated, the court may also, in its discretion, remand the matter to the council for such further proceedings, not inconsistent with the decree, as justice may require.

XVI. An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.

XVII. The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with the referee's findings of fact and conclusions of law.

XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the conservation commission or local governing body may appeal said decision to the superior court in the manner prescribed in this section. The filing of a request for reconsideration shall automatically stay the effectiveness of the department's decision relating to said prime wetland. Said stay shall remain in force until the department has issued its decision after reconsideration.

**§ 482-A:10-a. Damages.**

I. If, upon appeal of the landowner, the superior court determines that the decision appealed from so exceeds the bounds of the police power as to constitute the equivalent of taking without compensation and that the land as so regulated meets the public purpose standards of this chapter, and if such ruling is affirmed on appeal or becomes the law of the trial by failure of the state to appeal, the superior court shall then proceed to the assessment of the landowner's damages. Unless the department, at this stage, consents to the reversal or modification of its decision by the superior court, that court shall first determine all questions of land title, after notice to all persons interested in the land, including notice by publication to any unknown owners, and then shall assess the damages of the landowner or landowners proceeding as provided in RSA 482:35-38, inclusive, and RSA 498-A:27, and may enter judgment against the state accordingly. The interest acquired by the state by virtue of such proceedings shall be a perpetual negative easement that the privately-owned land or interest in the land described in the proceedings shall not thereafter be excavated, removed, filled, dredged, canalized or ditched, subject to any such reasonable reservations to the landowner as the department may have stipulated to prior to the assessment of damages. The state may, in the alternative, purchase the land or interest in the land in fee simple or other acceptable title, or subject to acceptable reservations and exceptions, by agreement with the landowner. To satisfy any judgment or purchase agreement under this section, the governor and council, in their discretion, may draw their warrant on the marine fisheries fund, the fish and game fund, any other available appropriation for such purpose, or on any money in the treasury not otherwise appropriated, or any combination of such funds, as they may determine to be just and reasonable, or, in the alternative, they may certify a judgment to the next session of the general court for the passage of an appropriation of money sufficient to satisfy the same. The department may, in the name of the state, accept gifts of land or interests in land for the purposes of this chapter.

II. The use of the marine fisheries fund or the fish and game fund under paragraph I shall require a finding that the expenditure will be of substantial benefit to marine fisheries or to fish and wildlife, as the case may be, and the governor and council shall request the prior opinion of the fish and game commission in each such case.

**§ 482-A:11. Administrative Provisions.**

I. The commissioner shall adopt reasonable rules, pursuant to the rulemaking provisions of RSA 541-A, to implement the purposes of this chapter.

II. Decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

III. Upon written notification to the department by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall suspend action upon such notice and shall not make its decision on the notice of a minor project nor hold a hearing on it if a major project until it has received and acknowledged receipt of a written report from such commission, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension as permitted by the department. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing,



the record of which shall be made a part of the record of the department. If a conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local conservation commission pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.

IV. The department shall not grant a permit with respect to any activity proposed to be undertaken in or adjacent to an area mapped, designated and filed as a prime wetland pursuant to RSA 482-A:15 unless the department first notifies the local governing body, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after public hearing, that the proposed activity, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1. This paragraph shall not be construed so as to relieve the department of its statutory obligations under this chapter to protect wetlands not so mapped and designated.

V. Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.

VI. The commissioner may adopt rules pursuant to RSA 541-A establishing an expedited application and permitting process for certain minimum and minor impact projects. The provisions of RSA 482-A:3, I and paragraph III of this section shall apply.

#### **§ 482-A:12. Posting of Permits and Reports of Violations.**

Project approval by the department shall be in the form of a permit, a copy of which the applicant shall post in a secured manner in a prominent place at the site of the approved project. The department shall mail a copy of such permit to the local governing body of the municipality where the project is located. Any person proceeding without a posted permit shall be in violation of this chapter. All state, county and local law enforcement officers are directed to be watchful for violations of the provisions of this chapter and to report all suspected violations to the department.

#### **§ 482-A:13. Administrative Fine.**

The commissioner, after notice and hearing in accordance with the procedures set forth in RSA 541-A, is empowered to impose an administrative fine of up to \$2,000 for each offense upon any person who violates any provision of this chapter. This fine is appealable under RSA 541. Any administrative fine imposed under this section will not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized in RSA 482-A:14, III.

#### **§ 482-A:14. Penalties.**

I. Whoever recklessly or knowingly fails, neglects or refuses to comply with this chapter, rules adopted under this chapter, or an order or condition of a permit issued under this chapter, or recklessly or knowingly misrepresents any material fact in connection with any activities regulated or prohibited by this chapter, whether or not the owner of the land in question, shall be guilty of a misdemeanor if a natural person and guilty of a felony if any other person.

II. State and local law enforcement officials may prosecute any violation of this chapter as a violation. This provision shall not limit the state's enforcement authority under this chapter.

III. Failure, neglect or refusal to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by this chapter shall be deemed violations of this chapter. The court may, upon separate petition of the attorney general, or in connection with a petition for equity relief, levy upon any person who violates this chapter, whether or not the owner of the land in question, a civil penalty in an amount not to exceed \$10,000 per violation. Each day of a continuing violation shall constitute a separate violation. The proceeds of any civil penalty levied pursuant to this chapter shall be placed in a nonlapsing fund held by the treasurer, which may be expended by the department, subject to the approval of the governor and council, for the purpose of restoration, research, investigation and enforcement relative to wetlands.

#### **§ 482-A:14-a. Cease and Desist Orders; Penalty.**

The director of the division of forests and lands, department of resources and economic development, or his authorized agents, may issue a written cease and desist order against any timber operation in violation of this chapter. Any such violation may be enjoined by the superior court, upon application of the attorney general. A person failing to comply with the cease and desist order shall be guilty of a violation.

#### **§ 482-A:14-b. Removal; Restoration; Equity Relief.**

I. Whoever fails, neglects or refuses to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, or misrepresents any material fact made in connection with any activity regulated or prohibited by this chapter, whether or not the owner of the land in question, shall be liable for the removal of fill, spoil or structure placed pursuant to such a violation and the restoration of any wetlands disturbed in connection with the violation. The superior court shall have jurisdiction to order such relief and such additional relief in equity as may be appropriate.

II. Municipalities may apply to a justice of the superior court for injunctive relief against existing or impending violations of this chapter, or any rule or order issued under this chapter. The municipality shall give notice of any such action to the attorney general and the commissioner of environmental services, who may take such steps as they deem necessary to ensure uniform statewide enforcement, including but not limited to joining the action, assuming sole prosecution of the action, or, as of right, dismissing the action without prejudice. Such notice shall be given at least 30 days prior to the commencement of any such action, unless more immediate action is necessary to prevent irreparable environmental damage or other serious public harm, in which case such notice shall be given as soon as practicable, but in no event later than the date of commencement of the action. This paragraph shall not be construed to affect, in any manner, existing authority of municipalities to act based upon the provisions of other statutes or local ordinances.

#### **§ 482-A:15. Local Option; Prime Wetlands.**

I. Any municipality, by its conservation commission, or, in the absence of a conservation commission, the planning board, or, in the absence of a planning board, the local governing body, may undertake to designate, map and document prime wetlands lying within its boundaries, or if such areas lie only partly within its boundaries, then that portion lying within its boundaries. For the purposes of this chapter, "prime wetlands" shall mean any areas falling within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Such maps or designations, or both, shall be in such form and to such scale, and shall be based upon such criteria, as are established by the commissioner through rules adopted pursuant to RSA 541-A.

II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting,

file such maps and designations with the department, which shall accept and maintain them and provide public access to such maps during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 675:2 or RSA 675:3, as applicable.

## **PLACING FILL IN PUBLIC WATERS**

### **§ 482-A:16. Artificial Fill; Exemptions.**

No person shall place or cause to be placed any fill in any area below the mean high water level of any public waters or below the artificially-created high water level of publicly-owned bodies of water in this state with the intent or with the effect of creating or forming filled land adjacent to such bodies of water, except as provided in this subdivision. For the purposes of this subdivision, "public waters" means all natural ponds of more than 10 acres, and "publicly-owned bodies of water" or "public-owned water bodies" means those bodies of water whose artificial high water level is maintained by the state's exercise of its flowage rights on these ponds. The provisions of this subdivision shall not apply to such minor improvements of shorelines as the department, by rules adopted by the commissioner under RSA 541-A, may allow.

### **§ 482-A:17. Grant of Right.**

The governor and council, upon petition and only upon the recommendation of the department, may, for just consideration, grant to an owner of shoreline on public waters the right to place fill in the bed of such pond before the owner's shoreline. Every petition to place fill in the bed of public waters shall be filed with the department. The department, after 30 days' notice to abutters, to the local governing body of the municipality in which the property is situated, and to the department of health and human services, shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality, and notice posted in 2 public places in the municipality, and upon appropriate investigation shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be filled by the petitioner. The grant of the governor and council shall be evidenced by an instrument in writing, executed by the governor and council, attested by the secretary of state, and recorded in the county where the right is to be exercised. Land created by fill in accordance with the grant of the governor and council shall belong to the owner of the natural shoreline as if it were formed by natural accretion. The owner of a shoreline on a public-owned water body may petition the department for the right to place fill below the artificially-created high water level of a public-owned water body to the extent that the flowage rights owned by the state allow.

### **§ 482-A:18. Procedure for Removal of Fill.**

If any person places fill in the bed of public waters or below the artificially-created high water level of public-owned water bodies except as provided in this subdivision, such person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Any person may be compelled to remove the same by the superior court upon a petition brought by the attorney general.

### **§ 482-A:19. Fees.**

Any payment received by the state as determined by the governor and council under the provisions of RSA 482-A:17 for the grant of the right to place fill in the bed of a great pond shall be paid over to the state treasurer and shall be available for general revenue of the state.

### **§ 482-A:20. Costs for Hearing.**

The petitioner for a right to place fill in public waters shall make a deposit to the department of \$50 with each such petition. This payment shall be for expenses of publication, mailing and posting of notices by the department and for the expenses of hiring a hearing site, if a hearing outside of Concord is necessary. If the expenses amount to more than \$50, the department shall require the petitioner to pay the additional amount before it sends its recommendations to the governor and council with regard to the petition.

## **EXCAVATING AND DREDGING IN PUBLIC WATERS**

### **§ 482-A:21. Excavating and Dredging.**

I. No person shall excavate, remove, or dredge any bank, flat, marsh, swamp, or lake bed that lies below the natural mean high water level of any public waters of this state, except as provided in this subdivision. For the purposes of this subdivision, "public waters" are defined as all natural ponds of more than 10 acres. Upon the request of the owner of land abutting any public waters, the division shall determine the natural mean high water level of the abutting public water.

II. The provisions of this subdivision shall not apply to:

- (a) Any land above the natural mean high water level of public waters.
- (b) Any land below any artificially created high water level of any body of water.
- (c) Projects classified as minor or minimum impact under rules adopted by the commissioner under RSA 482-A:11 which exclusively involve excavation or dredging within a great pond, and no other associated major project activities requiring a permit pursuant to RSA 482-A.

### **§ 482-A:22. Grant of Right.**

The governor and council, upon petition and upon the recommendation of the department, may, for just consideration, grant to an owner of a shoreline on public waters the right to excavate, remove, or dredge any bank, flat, marsh, swamp or lake bed before the owner's shoreline. Every petition to excavate or dredge said areas shall be filed with the department. The department, after 30 days' notice to abutters, the local governing body of the municipality in which the property is situate, and the department of health and human services shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality. Upon appropriate investigation the department shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be excavated or dredged by the petitioner.

### **§ 482-A:23. Penalty.**

Any person who violates any provision of this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Any person may be compelled to return said land to its original condition by the superior court upon a petition brought by the attorney general.

### **§ 482-A:24. Fees.**

Any payment received by the state as determined by the governor and council under the provisions of this subdivision shall be paid over to the state treasurer and shall be deposited in the general funds of the state.

**§ 482-A:25. Hearing Costs.**

The petitioner shall make a deposit of \$50 with each petition to pay for the expenses of publication, mailing, and posting of notices, and for the expenses of hiring a hearing site, if a hearing outside of Concord is necessary. If these expenses are more than \$50, the department shall require the petitioner to pay the additional expenses before it sends its recommendations to the governor and council with regard to the petition.

**RESTRICTIONS ON USE OF STRUCTURES BUILT OVER THE WATERS OF THE STATE**

**§ 482-A:26. Dwellings Over Water.**

I. No person shall construct any structure suitable for use as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.

II. No person shall convert or modify any existing structure in order to make the structure suitable as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.

III. Existing dwellings over water which were constructed or converted to be made suitable for use as a dwelling in accordance with the law in effect at the time of construction or conversion, may be repaired or reconstructed, for maintenance purposes only, using any modern technologies, provided the result is a functionally equivalent use. Such repair or reconstruction may alter the interior design or existing cribwork, but no expansion of the existing footprint or outside dimensions shall be permitted. A condition of RSA 482-A:3 approval shall be the existence or installation of a sewage disposal system which has been approved pursuant to RSA 485-A:29-44. No permit shall be required for routine maintenance that does not involve work in the water.

IV. For the purpose of this section:

(a) "Dwelling over water" means any structure suitable for use as a dwelling which extends in any part beyond the shoreline of any public water or public-owned water body.

(b) "Shoreline" means that shoreline which exists when the surface of the water is at the mean high water level.

(c) "Suitable for use as a dwelling" means any structure which is used for residential purposes by one or more persons, or which contains kitchen, bathroom, shower, or toilet facilities.

V. The provisions of RSA 482-A:10, relative to reconsideration and appeals, and RSA 482-A:10-a, relative to takings without compensation, shall apply to all decisions of the department made under paragraph III.

**§ 482-A:27. Penalty.**

Any person who violates any provision of RSA 482-A:26 shall be required to remove the structure or portion of the structure constructed, reconstructed, repaired, converted, or modified in violation of said section and shall be subject to the civil, criminal, and other penalties set forth in RSA 482-A:13, 14, and 14-b. Any criminal fine collected for a violation of RSA 482-A:26 shall accrue to the use of the municipality in which the structure is located.